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C O N F I D E N T I A L STATE 125631

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E.O. 12958: DECL: 11/26/2018
TAGS: [PARM](#) [NATO](#) [PREL](#) [MOPS](#) [GM](#)
SUBJECT: DEMARCHE TO GERMANY REGARDING CONVENTION ON
CLUSTER MUNITIONS

REF: A. STATE 125608
[1](#)B. STATE 125512

Classified By: PM DAS Stephen Ganyard for Reasons: 1.4 (b) and (d)

[1](#)1. (U) This is an action request; see para 3.

[1](#)2. (C) Summary: On December 3, the Convention on Cluster Munitions (CCM) will be opened for signature in Oslo, Norway. The United States will neither sign this Convention nor participate as an observer. Germany will sign this Convention and has begun to consider how the Convention will be implemented. The MOD rep on the German delegation to the Convention on Conventional Weapons (CCW) briefed U.S. counterparts on the margins of the November 3-14 CCW meetings on Germany's intentions for implementing the CCM. While some aspects of the German interpretation will not create problems for interoperability, others raise questions. Germany intends to use the information shared with us to brief the Bundestag and to make a presentation at NATO. Post is requested to seek clarification on German intentions for implementing this policy and whom Berlin intends to brief. The United States stores cluster munitions in Germany, and it is likely that bilateral consultations on this issue will be required. End Summary.

OBJECTIVES:

[1](#)3. (C/REL DEU) Germany is a participant in NATO operations in Afghanistan, and the United States stores cluster munitions in Germany. As such, Germany's interpretation of Article 21 of the CCM is of great importance to U.S. military operations. Post is requested to pursue the following objectives and may draw on the background in paragraphs 4-6 and information in refuels as required.

-- Explain the United States is not in a position to sign the CCM at this time because of defense requirements and far-ranging security commitments, but the U.S. is taking technical steps to reduce the potential unintended harm to civilians that can be caused by cluster munitions.

-- Note U.S. appreciation for the inclusion of Article 21 in the CCM text and for German consultations with the U.S. delegation to the CCW GGE in Geneva on German intentions for implementing the CCM. Make the following inquiries related to information passed to the U.S. by our German counterparts at the CCW.

-- Convey that we interpret Article 21 to allow our

respective military forces to continue to conduct a broad range of combined operations where cluster munitions might be used, as well as to allow storage and transfer of U.S. cluster munitions on the host nation's territory. Note that the NATO Military Committee advice of October 2 confirms that interoperability is protected.

-- The U.S. understands that Germany is considering providing a brief at NATO on its implementation policy. Because the legal status of U.S. forces stationed in Germany is different than U.S. forces stationed in other NATO Allies, U.S. would appreciate more bilateral discussions before Germany briefs NATO so that the U.S. can better understand Germany's position on Article 21 implementation.

-- Stress the U.S. has serious concerns about any discussion on national implementation at NATO, particularly where a state may recommend that other NATO Allies take affirmative steps to assist in Germany's implementation. The U.S. is opposed to accepting additional NATO restrictions in order to assist with Germany's implementation.

-- Note U.S. willingness to conduct further consultations on this matter and offer an interagency Deputy Assistant Secretary-led team (PM DAS Steven Ganyard) to discuss. (December 10 is possible for us because the team likely will be in London for consultations on December 9 and could head to Berlin that evening for meetings the next day. However, if the German MOD and MFA feel that is too soon, bilateral consultations could occur later.)

-- Encourage Germany to take no action that would undermine maintaining flexibility to reach an understanding on this issue.

¶4. (C/REL DEU) Background: Thomas Fritsch, MOD rep from the German CCW delegation, briefed U.S. counterparts on Germany's intentions for implementation of Article 21 on the margins of the November 3-14 CCW meetings. German MOD thinking on CCM implementation is still a work in progress, and there has been receptiveness to U.S. suggestions. At this time the Germans are not requesting removal of cluster munitions; however, there could be issues concerning German involvement in assisting the United States in maintaining the U.S. stockpiles in Germany. More than likely, bilateral consultations will be necessary.

¶5. (C/REL DEU) Fritsch mentioned that the information he shared is intended for the Government's presentation to the Bundestag. He informed the U.S. delegation of Germany's intention to brief its plans for implementation at NATO as well. This is a potentially damaging action, given that Germany's current interpretation includes a requirement for North Atlantic Council (NAC) guidance prior to employment of cluster munitions during an Allied operation. Moreover, a German decision to brief Allies could lead other Allies, such as the UK, to do likewise and should be discouraged. A UK briefing, in particular, would not have good results for the United States, given the UK's political decision to call for the removal of U.S. cluster munitions from UK territory.

¶6. (C/REL DEU) The NATO Military Committee discussed this issue in depth in September. Efforts to add more clarity on storage and transit met with difficulty due to varying opinions on the subject; therefore, the Military Committee's advice included only a vague reference to national implementation of the CCM, and some Allies may take advantage of the lack of clarity to enact stricter implementation laws. However, the advice did include a general endorsement of Article 21's provisions to permit combined operations. One sticking point in the Military Committee's deliberations was Germany's suggestion that the NAC provide guidance on the use of

cluster munitions in NATO operations. The U.S. (joined by the UK and others) strongly opposed this inclusion; the decision to use cluster munitions is a military operational matter, not a political one. It should be left under the purview of the NATO Commander, not the NAC. Germany should be discouraged from raising this issue to the NAC given that it will be a divisive issue.

¶7. (SBU) Similar consultations were required after the conclusion of the Ottawa Convention on Anti-Personnel Landmines (APL). The United States was able to maintain U.S. APL stocks in Germany based on post-WWII basing agreements. The text of the Convention on Cluster Munitions can be found at:
www.stopclustermunitions.org/the-solution/the-treaty/

¶8. (U) For more information please contact Katherine Baker (202-663-0104) or Sho Morimoto (202-663-0290) in PM/WRA.
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